Newspaper and Mail Deliverers' Union of New York and Vicinity (Jalt Corporation d/b/a U.N.D.S.) *and* Leslie F. Kilian. Case 3–CB–7687

August 1, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS COWEN AND BARTLETT

On April 27, 2001, Administrative Law Judge Bruce D. Rosenstein issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified and set forth in full below.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below, and orders that the Respondent, Newspaper and Mail Deliverers' Union of New York and Vicinity, Long Island City, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees with discharge if they refuse to join or support Newspaper and Mail Deliverers' Union of New York and Vicinity.

(b) Acting as the exclusive collective-bargaining representative of the Albany, New York facility employees unless and until the labor organization is certified by the National Labor Relations Board as the exclusive collective-bargaining representative of such employees.

(c) Giving effect to or attempting to enforce any collective-bargaining agreement with U.N.D.S. with respect to the Albany, New York employees.

(d) Accepting dues or fees that have been deducted from the wages of employees of the Albany, New York facility.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole all drivers at the Albany, New York facility with interest for all initiation fees, dues, and other moneys, if any, paid by or withheld from them, in the manner set forth in the remedy section of the judge's decision, as modified herein.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of reimbursement due under the terms of this Order.

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[1] In finding that the Employer's Albany, New York facility was a separate appropriate unit, and that its employees were not an accretion to the preexisting bargaining unit, the judge applied a presumption that a single-facility unit is appropriate. We need not pass on the applicability of the presumption under the circumstances presented here because (1) the Respondent does not contest the judge's use of the presumption in this case; and (2) even without the benefit of the presumption, we find, on the basis of the traditional community of interest factors, that the Albany employees constitute a separate appropriate unit. We also find that the Albany employees do not satisfy the Board's test for accretion for the additional reason that they do not share a sufficient community of interest with the preexisting unit. See, e.g., *Giant Eagle Markets Co.*, 308 NLRB 206 (1992); *Safeway Stores*, 256 NLRB 918 (1981).

[2] The judge recommended ordering the Respondent to reimburse the Albany employees "jointly and severally with U.N.D.S." (the Employer) for union fees and dues withheld from or paid by the employees. In settling a separate unfair labor practice charge arising out of the same events at issue here, U.N.D.S. agreed to reimburse the Albany employees "jointly and severally" with the Respondent for fees and dues paid by or withheld from the employees. Because of the settlement, the complaint in this case does not allege any violations by U.N.D.S. Thus, we lack jurisdiction over U.N.D.S. for the purpose of issuing a remedial order against it. *Innovative Communications Corp.*, 333 NLRB No. 86 fn. 5 (2001). Therefore, instead of ordering the Respondent to reimburse the employees "jointly and severally with U.N.D.S.," we shall order the Respondent to make whole the Albany employees with interest "for all initiation fees, dues, and other moneys, if any, paid by or withheld from them." See generally *Radio Officers' Union of Commercial Telegraphers Union v. NLRB*, 347 U.S. 17, 52–55 (1954).

At the hearing, a representative of U.N.D.S. testified that pursuant to the settlement, U.N.D.S. has already reimbursed a portion of the moneys paid by or withheld from the Albany employees. We leave to the compliance stage of this proceeding the determinations of (1) the amounts of any payments made by U.N.D.S. pursuant to the settlement, (2) the drivers to whom those payments were made, and (3) the effects of any amounts received from the settlement on the drivers' remedial awards in this case. See generally *Weldun International*, 321 NLRB 733, 734 fn. 6, and 737–738 (1996), enfd. in relevant part 165 F.3d 28 (6th Cir. 1998) (Board ordered backpay and reinstatement to remedy 8(a)(3) violations; left to compliance the issue of the effect on backpay awards of amounts received pursuant to settlement).

We shall further modify the judge's recommended Order to conform to his findings and to the Board's standard remedial language. In addition, we shall substitute a new notice to conform to our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB No. 29 (2001).

(c) Within 14 days after service by the Region, post at its union office in Long Island City, New York, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 14 days after service by the Region, forward a sufficient number of signed copies of the notice to the Regional Director for posting at the Albany, New York facility by U.N.D.S., if willing, in places where notices to employees are customarily posted.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply with this Order.

Dated, Washington, D.C. August 1, 2002

Peter J. Hurtgen,	Chairman
William B. Cowen,	Member
Michael J. Bartlett,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with discharge if they refuse to join or support Newspaper and Mail Deliverers' Union of New York and Vicinity.

WE WILL NOT bargain with U.N.D.S. as the collective-bargaining representative for the drivers at the Albany, New York facility unless we have been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of such employees.

WE WILL NOT give effect to or attempt to enforce our collective-bargaining agreement with U.N.D.S. with respect to the drivers at the Albany, New York facility.

WE WILL NOT accept dues or fees that have been deducted from the wages of employees of the Albany, New York facility.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole, with interest, all drivers employed at the Albany, New York facility for all initiation fees, dues and other moneys, if any, paid by or withheld from them.

NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY

Alfred M. Norek, Esq., for the General Counsel.
J. Warren Mangan, Esq., of Long Island City, New York, for the Respondent Union.
Thomas Baio, of Edison, New Jersey, for U.N.D.S.

DECISION

STATEMENT OF THE CASE

BRUCE D. ROSENSTEIN, Administrative Law Judge. This case was tried before me on January 10 and 11, 2001, in Albany, New York, pursuant to a complaint and notice of hearing (the complaint) issued by the Regional Director for Region 3 of the National Labor Relations Board (the Board) on October 17, 2000.[1] The complaint, based upon original and amended charges filed by Leslie F. Kilian (Kilian), alleges that Newspaper and Mail Deliverers' Union of New York and Vicinity (the Respondent or Union) has engaged in certain violations of Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issues

The complaint alleges that the Respondent threatened employees with discharge if they did not become members of the Union and that Respondent obtained recognition and entered

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] All dates are in 2000 unless otherwise indicated.

into and since has maintained and enforced a collective-bargaining agreement with U.N.D.S. even though it did not represent an uncoerced majority of the Unit. Additionally, the complaint alleges that the collective-bargaining agreement provides that all unit employees are required to become members of Respondent, and/or to pay an agency fee to Respondent as a condition of employment even though it was not the lawfully recognized exclusive collective-bargaining representative of the Unit.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following.

FINDINGS OF FACT

I. JURISDICTION

U.N.D.S. is a corporation engaged in the distribution and transportation of magazines and printed materials, with an office and place of business located at 175 Talmadge Road, Edison, New Jersey, and various other facilities, including a facility located at 8 Anderson Drive, in Albany, New York. U.N.D.S., in conducting its business operations within the State of New York, derived gross revenues in excess of $50,000 for the transportation of freight directly to points outside the State of New York. The Respondent admits, and I find, that U.N.D.S. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

In May 1992, the Board conducted a representation election at U.N.D.S. that covered drivers employed in its Edison, New Jersey, and Joppa, Maryland locations. The Edison and Joppa facilities' were certified by the Board, and when the Joppa facility closed, the certification was extended to a Winchester, Virginia facility that was opened in 1994. Respondent and U.N.D.S. entered into memoranda of agreements dated July 10 and October 20, 1994, that were then superseded by a collective-bargaining agreement that was in effect from January 1, 1996, to July 9, 1999 (GC Exh. 2). Thereafter, the parties' extended their agreement from July 10, 1999, to July 9, 2004 (GC Exh. 3).

On December 27, 1996, Joseph Baio, incorporated an entity known as Jansons Corporation that served as a management company for a number of entities under his supervision and control. On February 21,1996, Joseph Baio formed JB Leasing Corporation and on February 28, 1997, he formed JB Trucking Corporation.[2] All of these companies are interrelated. In this regard, Jansons manages JB Trucking Corporation and JB Leasing Corporation and JB Trucking Corporation owns JB Leasing Corporation. Joseph Baio, or his two sons, Thomas and Louis, hold official positions in all of the above corporations. For example, Joseph Baio is president of Jansons Corporation, president of U.N.D.S. and chairman of JB Trucking Corporation.

In 1998 U.N.D.S. serviced customers in the Albany, New York area, and picked up Time and Newsweek magazines from Quad Graphics, a printer located in Saratoga Springs, New York, before delivering the product to various outlets in the vicinity. During that time period, the bulk of the publication and delivery magazine business in the Albany-Troy-Schenectady area was performed by a competitor known as Troy News Company. On or about February 5, 1999, director of transportation for Troy News Company, Brian Caverly, was informed by the Company's bank that Troy News was going to be closed due to financial problems. The bank gave Caverly permission to deliver freight that was stored in the terminal and had been committed for delivery over the weekend of February 5, 1999. For that purpose, Caverly contacted Joseph Baio to inquire whether his company was interested in making the deliveries and if he could use Caverly and some of the drivers that worked for Troy News Company to complete the work. Baio was very interested in performing this work and instructed Caverly to rent trucks, obtain employees to assist him, and make the deliveries that were scheduled over the weekend. Baio promised Caverly that he would reimburse him for the costs associated to rent the trucks and any other expenses incurred for the deliveries. After the work was completed, Caverly apprised Baio that Troy News had a weekly obligation through Time Inc. to pick up Time magazine from Quad Graphics, and inquired of Baio whether he was interested in acquiring that work. Baio gave Caverly the authority to make those deliveries and Caverly, along with several Troy News drivers, went to Quad Graphics on the evening of February 7, 1999, consolidated the products and put them on rented trucks for delivery to wholesalers the next morning. Additionally, Baio informed Caverly that effective February 8, 1999 (Monday), he could commence work for him. The arrangement of using the rented trucks to pick up the product at Quad Graphics continued for the next several weeks with Baio reimbursing Caverly for all costs associated with the deliveries. In early March 1999, JB Trucking Corporation arranged to rent and executed a lease for a terminal and facility in Albany, New York, with the intent of taking over the business formerly handled by Troy News. New trucks were purchased by JB Trucking Corporation or sent from U.N.D.S. to be used in the business.[3] Caverly was charged with the responsibility of hiring drivers to staff the facility. For that purpose, Caverly contacted, interviewed, and hired 7 former drivers from Troy News Company and also hired a warehouse manager. The employees filled out applications for Able Leasing, an independent company contracted by Jansons to employ and manage the payroll operations of its nonunion employees.

[2] JB Leasing Corporation was established to purchase new trucks and lease them back to Baio. In addition, it manages and performs the maintenance on all tractors and trailers owned and used by U.N.D.S. JB Trucking Corporation was established as an independent company to broker loads of printed materials out of Edison, New Jersey.

[3] The Albany facility is approximately 175 miles from Edison, New Jersey.

By letter dated March 9, 1999, Respondent informed Thomas Baio that with the opening of the facility in Albany, New York, it was their position that it came under the Union's jurisdiction as set forth in the parties' collective-bargaining agreement (GC Exh. 4). On March 11, 1999, Thomas Baio informed Respondent that his father made an investment in the Albany facility and the terminal did not involve nor was it included in the bargaining unit of U.N.D.S. (GC Exh. 5). By letter dated March 22, 1999, the Respondent formalized a grievance that the Albany facility came under the parties' collective-bargaining agreement and the matter should be referred to arbitration if the Baio's persisted in challenging this position (GC Exh. 7).

Since the matter could not be resolved to the satisfaction of the parties, an arbitration hearing commenced in October 1999, in Edison, New Jersey. After several days of testimony by U.N.D.S. officials including Joseph and Thomas Baio, U.N.D.S. determined that it would be in its best interest to settle the underlying matter. For this purpose, U.N.D.S. agreed that the employees in the Albany facility would be covered by the U.N.D.S. collective-bargaining agreement. The parties then entered negotiations and finalized on March 3, a memorandum of agreement resolving the dispute pending before the arbitrator that became effective on March 17, subject to ratification by the Respondent (GC Exh. 8).[4]

B. Facts

On March 13, Thomas Baio sent a letter to Albany facility Manager Caverly that was posted so all drivers could be aware of changes to their employment (R. Exh. 9).[5]

On March 17, Thomas Baio drove to the Albany facility along with union representatives, Robert Sherman and Barry Bilotti. Thomas Baio called a meeting, attended by five drivers, to apprise them that effective at the end of the day the Company (AMPS) would no longer be in existence and effective on March 20, the employees would be required to fill out new applications to work for U.N.D.S. The drivers either completed the applications onsite or took them home to fill out. Thereafter, Caverly forwarded the completed applications to Edison, New Jersey. Thomas Baio further informed the drivers that they would have to join the Union and if they refused, they could be terminated. After addressing the drivers, Thomas Baio and Caverly left the meeting. Thereafter, Bilotti and Sherman spoke to the group. They distributed copies of the parties' collective-bargaining agreement (GC Exhs. 2 and 3) to the drivers and explained the requirement for the payment of agency fees and if employees did not join the Union, they could be terminated. No agency fee or dues authorization cards were distributed to the employees on March 17, because the March 3 memorandum of agreement (GC Exh. 8) had not been ratified by the union membership.

The ratification of the memorandum of agreement occurred on March 27. Bilotti and Sherman returned to the Albany facility on April 15, and met with the drivers. At the meeting, attended by five drivers, Bilotti distributed agency fee cards to the drivers. Those in attendance signed the cards on that date and returned them to Bilotti (GC Exh. 9).

On August 12, Bilotti and Sherman visited the Albany facility and held a meeting with the drivers. Bilotti informed the drivers that a number of grievances and unfair labor practices had been filed against U.N.D.S. involving the issue of whether the Albany facility was part of the parties' collective-bargaining agreement. Additionally, he apprised the drivers that if some of them did not have enough money to pay the agency fee in a lump sum, a provision could be made to pay it incrementally and the time period extended.[6]

On or about August 18, Kilian filed unfair labor practice charges against Respondent and U.N.D.S. contesting the requirement to pay agency fees and dues to the Union and the parties' collective-bargaining agreement provision that a failure to pay such fees or dues would result in termination. On September 29, U.N.D.S. entered into an informal settlement agreement with Kilian and the Board to resolve the underlying unfair labor practices (GC Exh. 11). As part of the settlement, U.N.D.S. agreed to pay one-half of the money that had been paid to the Union in the form of agency fees or dues and to post a notice to employees for a period of 60 days.

[4] The agreement provides in pertinent part that:

> 1. Drivers at the American Magazine Postal Service (AMPS) in Albany, New York, shall hereinafter be bargaining unit employees and covered by the terms and conditions contained in the parties' prevailing collective-bargaining agreement.
>
> 2. All drivers (currently and in the future) working for the Employer at the Albany Depot shall be considered to be based at the Edison Depot and shall be added to the bottom of the Edison Depot seniority list, as of the effective date of this memorandum. As between themselves, the position of said Albany Depot drivers on the Edison Depot seniority list shall be in accordance with their respective dates of hire by AMPS or the Employer at the Albany Depot.

[5] The letter states in pertinent part that:

> 1. On March 17 AMPS will terminate its contract with Able Leasing for Albany drivers only. AMPS and U.N.D.S. will be operationally merging effective on that date. Therefore, all drivers will have to essentially reapply for their positions commencing on March 17. U.N.D.S. and the Union will now be the hiring company and respective bargaining agent for all former AMPS Able drivers. The drivers will fall in line from a seniority standpoint in the combined U.N.D.S./AMPS merger, but in the order in which they were originally hired by Able Leasing. All drivers currently employed by AMPS will be afforded new positions. The Union representing the drivers in Edison will be serving as the bargaining agent for all AMPS drivers going forward, and a copy of the Union agreement will be available for review and distribution to all drivers.
>
> 2. Thomas Baio and Barry Bilotti (shop steward U.N.D.S./AMPS) will be onsite on Friday, March 17 to answer questions and help with the transition.

[6] Kilian attended this meeting and credibly testified that Sherman told the employees in attendance that the deadline to pay the agency fees was September and if the money was not paid by that date, the employees could be terminated. Likewise, Kilian testified that after the meeting, Bilotti told him that if you cannot pay dues or initiation fees you will be fired.

C. Analysis

1. The position of the parties

The General Counsel opines that when Respondent entered into a collective-bargaining agreement with U.N.D.S. on March 3, and obtained recognition as the exclusive collective-bargaining representative, it did so at a time that it did not represent an uncoerced majority of the Unit. Likewise, the General Counsel argues that the requirement contained in the parties' collective-bargaining agreement to require employees to become members of Respondent, and/or to pay an agency fee to Respondent as a condition of employment, was entered into at a time that the Respondent was not the lawfully recognized exclusive collective-bargaining representative. In articulating this argument, the General Counsel contends that the Albany facility is a separate appropriate unit and before Respondent can become the exclusive collective-bargaining representative of these employees, it must establish majority status. Here, the General Counsel opines that majority status was not obtained until after the parties' collective-bargaining agreement became effective on March 17.

The Respondent argues that from the time the Albany facility was established, they have continuously asserted that the drivers come under the Union's jurisdiction and accreted into the Unit (GC Exh. 4). Indeed, the Respondent points to article 1 of the parties' collective-bargaining agreement that states in pertinent part, "[t]he provisions of this Agreement shall apply to the Employer's principal place of business at 175 Talmadge Road, Edison, New Jersey and the facility at 257-4 Tyson Drive, Winchester, Virginia, or any other facility operated by JALT where work of the type and nature traditionally performed by bargaining unit members is to be performed." Additionally, the Respondent contends that the Albany facility does not constitute a separate appropriate unit due to the common ownership, common management, centralized control of labor relations and interrelation of operations that exist between U.N.D.S. and the Albany facility. Thus, Respondent opines that such indicia strongly support a multifacility unit rather then a single facility unit. Under these circumstances, Respondent contends that it lawfully extended their collective-bargaining agreement to cover the drivers employed at the Albany facility and did not violate Section 8(b)(1)(A) or 8(b)(2) of the Act.

2. Single facility indicia

Caverly credibly testified that he is responsible for hiring and firing employees at the Albany facility, dispatching employees to their work assignments, and handles all personnel problems of the Albany employees. Likewise, he prepares the payroll for the Albany facility before sending the finalized figures to Edison who then prepare checks for payment directly to the Albany employees. Caverly stated that there is no interchange of drivers between Edison and Albany and he does not have any supervisory control over the Edison drivers. Likewise, there are no permanent or short-term transfers of drivers between Edison and the Albany facility. Lastly, Caverly testified that he prepares customer bills from his Albany computer and all telephone and repair bills go directly to Albany for his approval before being forwarded to Edison for payment.

3. Multifacility indicia

Bilotti credibly testified that prior to the establishment of the Albany facility in March 1999, Edison drivers delivered third class mail and periodicals. After March 1999, Bilotti observed that Albany drivers would either pickup third class mail from Edison or return to Edison with third class mail on their trucks.[7] The record demonstrates that JB Leasing Corporation performs all of the maintenance on both Edison and Albany trucks in New Jersey and Albany trucks have the same JB Leasing Corporation logo on the side of their cab door as well as the same ICC numbers as the Edison vehicles. Drivers employed in Edison and Albany have the identical U.N.D.S. fuel purchase and New Jersey Turnpike Authority credit cards with all payments being made from Edison. As discussed earlier, the Jansons umbrella of companies including JB Trucking Corporation show Joseph Baio as chairman or president with his sons Thomas and Louis, serving as officers of the individual companies. Thus, common ownership and management are found among the companies. Lastly, the record includes evidence of the existence of uniform rules, regulations and policies, the centralized nature of administration, accounting, wages and benefits, the common skills and functions of the drivers, and a combined seniority list of Albany and Edison drivers.

4. Conclusions

Accretions to an established bargaining unit are regarded as additions to the unit and therefore as part of it. The Board has followed a restrictive policy in finding accretion because it forecloses the employee's basic right to select their bargaining representative. *Towne Ford Sales,* 270 NLRB 311 (1984). Thus, the accretion doctrine is not applicable to situations in which the group sought to be accreted would constitute a separate appropriate bargaining unit. *Passavant Retirement & Health Center,* 313 NLRB 1216 (1994).

A single plant unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity. *J & L Plate,* 310 NLRB 429 (1993). To determine whether the presumption has been rebutted, the Board looks at such factors as central control over daily operations and labor relations, including extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; and bargaining history, if any. *Esco Corp.,* 298 NLRB 837, 839 (1990), and cases cited.

The present case presents indicia supporting both a single location as well as the appropriateness of a multifacility unit. Although I agree that U.N.D.S. and the Albany facility have a number of common policies and procedures and centrally administer certain aspects of their operations, I find that the evidence regarding local autonomy, lack of interchange and lack of geographic proximity of the facilities is sufficient to rebut the multifacility unit or accretion of the Albany facility into the parties' collective-bargaining agreement.

[7] The Respondent might have legitimate arguments and the underpinnings for a meritorious grievance concerning work that has been transferred from U.N.D.S.-Edison to AMPS-Albany, however, that issue is not presently before me.

The Albany facility has a local manager and a local dispatcher. Caverly makes all hiring decisions and assigns drivers to routes from the Albany facility. He has no supervisory control over any of the Edison drivers. All personnel related matters including absences, tardiness, or requests for leave of the Albany drivers are the sole responsibility of Caverly. Likewise, drivers are instructed to contact Caverly if problems arise while they are on the road making deliveries. Thus, the existence of the centralized administration and control of some labor relations policies and procedures is not inconsistent with a finding, as here, that there exists sufficient local autonomy to support the single location presumption.

The record further demonstrates that there is a lack of significant interchange involving the Albany terminal and there is no permanent or temporary transfer of drivers between the Albany and Edison facilities.

Based on the forgoing, the evidence presented does not establish that the Albany terminal has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. Therefore, I find that the Albany facility is an appropriate unit. Under these circumstances, when the Respondent obtained recognition from and entered into a collective-bargaining agreement with U.N.D.S. as the exclusive collective-bargaining representative at a time that it did not represent an uncoerced majority of the Unit, it violated Section 8(b)(1)(A) of the Act. Additionally, when the Respondent threatened employees with discharge if they did not become members of the Union on March 17 and August 12, it also violated Section 8(b)(1)(A) of the Act. Lastly, when the Respondent applied the portion of the parties' collective-bargaining agreement to unit employees that required them to become members of Respondent and/or to pay an agency fee to Respondent, at a time when it did not represent the employees, it violated Section 8(b)(2) of Act. *Amalgamated Industrial & Service Workers Local 6 (X-L Plastics)*, 324 NLRB 647 (1997).

CONCLUSIONS OF LAW

1. JALT Corporation d/b/a U.N.D.S. is an employer, engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening employees with discharge if they refuse to join or support Newspaper and Mail Deliverers' Union of New York and Vicinity and by demanding and obtaining recognition from U.N.D.S., and enforcing a collective-bargaining agreement at a time when it did not represent a majority of the Albany, New York facility employees, it has restrained and coerced employees in violation of Section 8(b)(1)(A) of the Act.

4. By demanding and receiving agency fees and dues deducted from the wages of the Albany facility employees, Newspaper and Mail Deliverers' Union of New York and Vicinity has restrained and coerced employees of the Albany, New York facility in violation of Section 8(b)(1)(A) and 8(b)(2) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Newspaper and Mail Deliverers' Union of New York and Vicinity will not give effect to the collective-bargaining agreement with U.N.D.S., with respect to the drivers at the Albany, New York facility, unless and until it has been certified as the bargaining representative of any such employees.

Newspaper and Mail Deliverers' Union of New York and Vicinity will jointly and severally with U.N.D.S. reimburse all drivers employed at the Albany, New York facility for all initiation fees, dues and other moneys, if any, paid by, or withheld from them, plus interest. *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Newspaper and Mail Deliverers' Union of New York and Vicinity, Long Island City, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Acting as the exclusive collective-bargaining representative of the Albany, New York facility employees unless and until the labor organization is certified by the National Labor Relations Board as the exclusive collective-bargaining representative of such employees.

(b) Giving effect to or attempting to enforce any collective-bargaining agreement with U.N.D.S to the Albany, New York employees.

(c) Accepting dues or fees, which have been deducted from the salaries of employees of the Albany, New York facility, without the employees having executed a written authorization for such deduction.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse jointly and severally with U.N.D.S. all drivers at the Albany, New York facility for all initiation fees, dues, and other moneys, if any, paid by, or withheld from them.

(b) Within 14 days after service by the Region, post at its union office in Long Island City, New York, copies of the attached notice marked "Appendix."[9] Copies of the notice, on

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Albany, New York facility at any time since March 3, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(d) Furnish to the Regional Director signed copies of the aforesaid notice for posting at the Albany, New York facility. The Regional Director will furnish copies of the notice to the Albany, New York facility.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. April 27, 2001

APPENDIX

NOTICE TO MEMBERS

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with discharge if they refuse to join or support Newspaper and Mail Deliverers' Union of New York and Vicinity.

WE WILL NOT bargain with U.N.D.S. as the collective-bargaining representative for the drivers at the Albany, New York facility unless we have been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of such employees.

WE WILL NOT give effect to our collective-bargaining agreement with U.N.D.S. with respect to the drivers at the Albany, New York facility.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL jointly and severally with U.N.D.S. reimburse all drivers employed at the Albany, New York facility for all initiation fees, dues, and other moneys, if any, paid by, or withheld from them.

NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY